D.B. CIVIL CONTEMPT PETITION NO. 76/2004 IN

D.B. CIVIL WRIT PETITION NO.3083/2003

DATE OF ORDER : 07/10/2004

HON'BLE MR. RAJESH BALIA,J.
HON'BLE MR. GOVIND MATHUR,J.

Mr. Anil Bhandari, for the petitioners.
Mr. Harish Purohit, for the private respondents.
Mr. B.D. Purohit, for the respondent No.1.

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Heard learned counsel for the parties. In the public interest cause in D.B. Civil Writ Petition No.3083/2003 directions were issued against the respondents which included the State of Rajasthan through Secretary Housing, Urban Development, Government of Rajasthan, Housing Commissioner, Rajasthan Housing Board, The Additional Chief Enginer, Rajasthan Housing Board and Dy. Housing Commissioner, Rajasthan Housing Board, Jodhpur that they are ensured that in the area in question shall not be used for commercial purposes in violation of law and or in violation of lease deeds. In case of use of the residential properties for commercial purposes the respondents shall take appropriate action in accordance with the provisions of law and lease deed. The petitioner in his petition has alleged that from the allegation made in the writ petition and the application it appears that

the petitioner has only an apprehension that the construction which is undertaken by the respondents No.3 and 4 shall be used on completion of construction for commercial purposes. He has also stated that the notice has been issued by the officers of the respondent No. 1 and 2 for seeking explanation on some complaints received by them that the construction is likely to be used for commercial purposes in future and if that is so whey their licence is not cancelled. Apparently, no cause for initiating contempt proceedings against the respondents arise. Firstly, by the directions referred to above a duty was imposed upon the officers of the Housing Board to take appropriate action for ensuring that in the area in question which is residential, may not be used for commercial purposes. No blanket prohibition as such against the raising of construction in the area in question was given by the Court.

Consequently, on a complaint received by the officers of the Housing Board having such apprehension, they have taken first initiative of law calling upon the explanation of the respondents No.3 and 4 raising such constructions about their intended intention to use the property in question for commercial purposes in the residential area and also giving it out in clear terms that if that is so their leases are liable to be cancelled. In these circumstances, the cause for complaining of any

breach wilfully of the orders of the Court which have not even come into existence. Neither property which is incomplete can be said to be for use of the commercial purposes nor can it be said that the officers have not taken any action in furtherance of their duty in accordance with law. That apart it is informed by the learned counsel for the petitioner that it is after filing of the contempt, in furtherance of the notice in question the lease of the respondent No.3 and 4 has been cancelled without there being any contention about the merits by the Housing Board.

We are of the opinion that no cause survives for contempt proceedings. Notice are discharged.

(GOVIND MATHUR),J. **(RAJESH BALIA),J.**

J/G